IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1726 of 1999

in

SPECIAL CIVIL APPLICATIONNo 1222 of 1999

with
CIVIL APPLICATION NO. 14604 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIBHAI GALBABHAI PATEL

Versus

PARMABHAI KANJIBHAI PARMAR

Appearance:

MR RD DAVE for Appellants

MR CB DASTOOR for Respondent No. 1

MS MANISHA LAVKUMAR,AGP for Respondent No.3 & 4

Mr Munsha, for Respondent No. 2,at the request of court.

CORAM : MR.JUSTICE C.K.THAKKAR and
MR.JUSTICE P.B.MAJMUDAR
Date of decision: 28/01/2000

ORAL JUDGEMENT

Admitted. Mr C.B.Dastoor appears and waives service of notice of admission on behalf of respondent No.2. Mr. Munsha who had appeared on behalf of respondent No.2 before learned Single Judge is present in court as requested to appear in the matter as he appeared before the learned Single Judge. Ms Manisha Lavkumar, AGP appears and waives service of notice of admission on behalf of respondents Nos.3 and 4. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against an interim order passed by the learned Single Judge in SCA No. 1222 of 1999 on December 8, 1999. The order reads as under :

"Heard learned advocates on interim relief. There shall be interim relief in terms of the ad-interim order made on 17th February 1999. Learned advocate Mr. Dave requests that this order be stayed for a period of two weeks. Request is rejected."

The case of the appellants was that they were elected as Sarpanch and Member respectively of Mahi Gram Panchayat , Taluka Vadgam, District Banaskantha in an election held on January 2, 1997. It appears that a criminal case was filed against the appellants. A notice under Section 57 (1) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act") was issued. The District Development Officer, respondent No.2, by an order dated December 2, 1998, after affording an opportunity of hearing, removed the appellants as Sarpanch and Member respectively in exercise of power under the said provision.

Being aggrieved by the order passed by the second respondent, the appellants preferred two appeals which came to be heard by the Additional Development Commissioner, Gujarat State, respondent No. 3, who by a common judgment and order dated January 30, 1999 allowed both the appeals . In the operative part of the order,

the Addl. Development Commissioner observed as under :

"The said impugned order is set aside by allowing the appellants appeals against the opponent District Development Officer, Banaskantha , Palanpur order No. A-1/OP/Sarpanch/Member/57/Notice/ Action/ Vashi/ 1431, dated 2.12.1998, under section 57 (1) of the Gujarat Panchayat Act, 1993, removing Shri Haribhai Galbabhai Patel, Sarpanch , Shri Kesarbhai Parthibhai Patel, Member as the Sarpanch and Member respectively of Mahi Gram Panchayat , Taluka Vadgam, District Banaskantha. The appellants are reappointed as Sarpanch and Member of the Gram Panchayat.

The competent authority, if find proper and necessary, shall not be barred by this order to initiate proceedings afresh against the concerned officials in accordance with law under the provisions, applicable, of Gujarat Panchayats Act.

Order passed today the 30th day of January 1999. The parties to inform the order."

Though two appeals were filed, only one SCA was preferred by respondent No.1. Learned Single Judge entertained the petition and granted interim relief by passing an order which we have extracted hereinabove which is subject matter of challenge in the present appeal.

In our opinion, when there were two appeals before the Additional Development Commissioner, two SCAs ought to have been filed. Likewise, two LPAs should have been preferred. In view of the fact, however, that we are passing final order which would result in disposal of LPA as well as SCA, we are not passing order directing filing of one more SCA and one more LPA .

Several contentions were raised by Mr. Dave for the appellants. It is, however, not necessary to enter into all of them. The main argument advanced by the learned counsel is that in connection with a criminal case, the District Development Officer has passed the order under Section 57 (1) of the Act. The submission of the learned counsel for the appellants was that Section 57 provides for removal which is a punitive action. Section 59, on the other hand, deals with suspension pending criminal

prosecution. It was urged that when the criminal case was not over, no action could have been taken by respondent No.2 under Section 57 of the Act. At the most, proceedings could have been initiated under Section 59 of the Act. Mr. Dave,therefore, submitted that the order of removal was clearly without jurisdiction and de hors the Act. The appellants,therefore, preferred appeals before the Additional Development Commissioner who rightly allowed those appeals, set aside orders of removal and allowed respondent No.2 to take appropriate action in accordance with law. The said orders which were strictly in accordance with provisions of law could not have been interfered with by the learned Single Judge and no interim relief could have been granted. We find considerable force in the argument of Mr. Dave.

No doubt, Mr. Dastoor submitted that respondent No.2 has recorded a finding that both the appellants were afforded opportunity of hearing and recorded a finding that the case was covered by Section 57 (1) of the Act. He also submitted that over and above the case which was pending, there were other cases which were registered against appellant No.1. (At this stage, Mr.Dave submitted that there is nothing on record that other cases were filed against appellant No. 1 and that the fact is not reflected even in the proceedings of the case). Our attention was also invited by Mr. Dastoor to a decision of the Single Judge of this Court in Amishbhai I Patel vs. State of Gujarat, 1994 (2) GLR, 1402.

In our opinion, it is not necessary to enter into larger question. A fact, however, remains that a case against the appellants is pending and is sub-judice. It is still not finalised. An action of removal can be taken only after finding as required by Section 57 of the Act against the Sarpanch or Member, as the case may be. Institution of a criminal proceeding would not result into invoking provisions of Section 57 of the Act. In our view, therefore, the Additional Development Commissioner was right in setting aside the order passed by respondent No.2 by granting him liberty to pass an appropriate order in accordance with law. Such order could not have been stayed by the learned Single Judge.

For the foregoing reasons, in our opinion, LPA deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside and the order passed by the Additional Development Commissioner is restored. We may, however, state that as observed by the Additional Development Commissioner, respondent No.2 will consider to initiate appropriate proceedings afresh

in accordance with law and the order passed by us will not come in his way in passing an order in accordance with law. Appeal is allowed to the aforesaid extent. No order as to costs. Since we have finally disposed of LPA, obviously SCA also will not survive and it is also treated as disposed of. As the matter pertains to office bearers of elected body , respondent No.2 will take appropriate proceedings in accordance with law as expeditiously as possible. All contentions of parties are left open and they will be decided according to law. Writ of this court will be sent down to respondent No.2. At the request of learned counsel for the appellants,direct service to respondent No.2 is also permitted. Notice on civil application stands discharged. No costs.

The learned counsel for respondent No.1 prays that the order passed by us may be kept in abeyance for two weeks as respondent No.1 intends to go to the Apex Court. In the facts and circumstances of the case, the prayer cannot be granted. Hence, it is rejected.

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